SOON PENG YAM PTE. LTD.

v.

GRANT IRENE NEE CHIA KIM LEAR

HIGH COURT, SINGAPORE
T KULASEKARAM J
TS SINNATHURAY J
FA CHUA J
[CIVIL APPEAL NO. 14 OF 1983]
13 JANUARY 1984

LANDLORD AND TENANT: *Termination - Effective date - Effect of conduct of parties.*

The parties had entered a tenancy agreement for a term of three years. After the agreement ended by effluxion of time, from 1 November 1980 the respondent occupied the premises under a renewed tenancy at the rental of $5,000 per month. A three months' notice to quit dated 1 November 1980 was served on the respondent on 11 November. The respondent quit and delivered up possession of the premises on 14 March 1981. The appellants contended that on 28 January 1981, there was an oral agreement made between them and the respondent that from 1 February 1981, the respondent was to be a monthly tenant for a period of three months at a rental of $10,000 per month payable in advance and claimed rent on that basis. The respondent counter-claimed for the balance of rent and PUB deposits due to her. Judgment was given for the appellant. The respondent appealed. The High Court allowed the appeal. The appellant then appealed.

Held:

[1] The finding of fact by the District Judge that there was ample evidence to hold that there was an agreement as claimed by the appellant could not be disturbed.

[2] Neither party could rely on the notice dated 1 November 1980. By their conduct the parties had treated the tenancy as having been effectively terminated on 31 January 1981 and it was on this basis that the parties had entered into a monthly agreement.

[Appeal allowed.]

For the appellant - Tan Jing Quee
For the respondent - Bala Chandran

JUDGMENT

TS Sinnathuray J:

This appeal arises from a claim by the appellants against the respondent for the sum of $6,138.87 being rentals and PUB charges in respect of the premises, Unit 2301, Shenton House, Shenton Way tenanted by the respondent. The respondent counter-claimed for the sum of $8,861.13 being the balance of rental and PUB deposits due to her from the appellants. At the conclusion of the hearing of the action in the District Court, the learned District Judge gave judgment for the appellants and dismissed the counter-claim of the respondent. On appeal to the High Court, Wahab Ghows J allowed the appeal. He set aside the judgment of the District Court and gave judgment for the respondent in the sum of $416.13. The appellants and respondent appealed against that decision. The relevant facts are these.

The tenancy agreement of the parties for the premises was for a term of three years from 1 November 1977 to 31 October 1980. By a letter dated 14 July 1980 the respondent gave notice to the appellants of her intention to exercise her option, under cl. 5(ix) of the tenancy agreement, to renew the tenancy of the premises for a further term of two years. On 16 July 1980, the appellants' solicitors replied that the appellants had noted the respondent's request but added that as soon as the second term commenced, the appellants will be serving upon the respondent a notice, under the same cl. 5(ix) of the tenancy agreement, to terminate the renewed tenancy. This they did. On 1 November 1980, the appellants through their solicitors gave the respondent three months' notice to quit and deliver up vacant possession of the premises.

It was the case for the appellants, and the learned District Judge so found that on 28 January 1981, before the expiry of the notice to quit, there was an oral agreement made between the appellants and the respondent that from 1 February 1981 the respondent was to be a monthly tenant for a period of three months at a rental of $10,000 per month payable in advance. The respondent however quit and delivered up possession of the premises on 14 March 1981.

The appellants claimed against the respondent the sum of $20,000 being rental for February and March 1981 and $433.87 being PUB bills payable on behalf of the respondent, less the rental deposit of the sum of $13,500 and PUB deposit of $795 paid by the respondent. The appellants obtained judgment for the difference in the sum of $6,138.87.

At the hearing of the appeal in the High Court, it was assumed that the three months' notice to quit dated 1 November 1980 was served on the respondent on 11 November 1980 and the notice to quit was taken as effective from that date. Therefore, the learned Judge concluded that the respondent could continue to occupy the premises under the tenancy agreement up to 10 February 1981 at the rent of $5,000 per month.

The learned Judge then referred to the evidence that the respondent had sent by post to the appellants' chairman a letter dated 14 February 1981 giving notice of her intention to quit the premises on 28 February 1981 but had only delivered up possession on 14 March 1981. And, on the finding that the respondent had agreed to pay rent at $10,000 per month after the expiration of the renewed tenancy agreement he ruled that the respondent had to pay them rent at $5,000 for the period 1 February 1981 to 10 February 1981 and at $10,000 for the period 11 February 1981 to 15 March 1981. At his request, Counsel for both parties calculated the rent payable as aforesaid at $13,878.87. As the respondent had $14,295 with the appellants to meet the rental and PUB bills, the amount due to the respondent from the appellants was $416.13 for which the respondent was given judgment.

Before us, for the appellants, it was contended that the learned Judge had erred in law and in fact in relying on the notice to quit to compute the rents due and payable by the respondent to the appellants. Counsel for the respondent, on the other hand, urged upon us to review the evidence and disturb the finding of fact that there was an agreement between the parties for the rental of the premises at $10,000 per month with effect from 1 February 1981

Now, the following facts are not in dispute: that after the tenancy agreement ended by effluxion of time, from 1 November the respondent occupied the premises under the renewed tenancy at the rental of $5,000 per month; that the renewed tenancy was terminated by a valid notice to quit dated 1 November 1980; and, that the respondent quit and delivered up possession of the premises on 14 March 1981.

The contest is whether there was a fresh agreement made between the parties on the 28 January 1981. The learned District Judge considered this issue to be "the crux of the whole matter". In his grounds of decision he has carefully considered and analysed the evidence given at the hearing. He refers to the discussion had on 28 January 1981 when the respondent through her husband who had her authority to negotiate on her behalf accepted a maximum of three months' grace to vacate the premises on payment of $10,000 monthly rental with effect from 1 February 1981. There is confirmation of the oral agreement by the respondent in her letter dated 2 February 1981. More importantly, when the respondent gave evidence she admitted that she had agreed to pay $10,000 per month for a maximum period of three months from 1 February 1981. In our judgment three was ample evidence before the learned District Judge for him to hold as he did that "there was certainly an agreement" to rent the premises to the respondent for three months at the rent of $10,000 per month from 1 February 1981. This finding of fact cannot be disturbed.

The remaining question is what effect, if any, has the notice to quit on the agreement reached between the parties. It appears from the record, that it arose for the first time on appeal. We have already stated how the learned Judge gave effect to the notice to quit. But there is nothing in the Notes of Argument or in the Judgment on what ground he made that decision and we did not have the benefit of any argument on the point. Our decision is therefore based on general principles of law applicable to the case.

We accept that the notice to quit dated 1 November 1980 served on the respondent on 11 November 1980 would in the normal course of events have effectively terminated the renewed tenancy on 10 February 1981. But in this case the parties had, during the currency of the notice of quit, entered a new agreement on 28 January 1981 which had created a new monthly tenancy of the premises with effect from 1 February 1981 at a rent of $10,000 per month. By their conduct the parties had treated the notice to quit as having effectively terminated the renewed tenancy on 31 January 1981. It was on this basis that the parties had entered into a monthly agreement. Therefore, the respondent cannot now be heard to say the notice to quit only effectively terminated the renewed tenancy on 10 February 1981 and not on 31 January 1981. In our judgment, neither party can rely on the notice and the learned Judge should not have given effect to it. For these reasons, we allow this appeal and restore the decision of the learned District Judge with costs here and below to the appellants.

Also found [1984] 1 CLJ 332

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